



**OPEN AIR DINING  
ENCROACHMENT PERMIT AGREEMENT  
(FOR MORE THAN EIGHT PEOPLE)**

1. **Permittee:** \_\_\_\_\_ (Name of Permittee)  
 \_\_\_\_\_ (Address of Permittee for Notices)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ (Address of Restaurant if differs from above)  
 \_\_\_\_\_  
 \_\_\_\_\_
  
2. **Commencement Date:** \_\_\_\_\_ (first day of closest month, e.g. April 1, 2007).
  
3. **Termination Date:** \_\_\_\_\_ (five years later, e.g., March 31, 2012)
  
4. **Open dining area premises:** Permittee may operate open air dining in the area consisting of a total of \_\_\_\_\_ square feet on that certain real property located on the public sidewalk areas adjacent to the \_\_\_\_\_ foot (\_\_\_\_\_) street frontage of the structure located along \_\_\_\_\_ (“Premises”).
  
5. **Hours of Operation of Open Air Dining area:** Open Air Dining is permitted during the hours of \_\_\_\_\_, Monday through Friday, and \_\_\_\_\_ Saturday and Sunday (“Approved Hours of Operation”).
  
6. **Width of Unobstructed Pedestrian Path:** At all times the use of the Premises shall allow for an unobstructed pedestrian path adjacent to the Premises of \_\_\_\_\_ in width as shown on the Plans (“Unobstructed Pedestrian Path”).
  
7. **Description of Barrier:** The barrier shall consist of \_\_\_\_\_ as shown on the Plans attached as Attachment 1 (“Barrier”).
  
8. **Base Fee:** The base fee shall be One Dollar and Forty Cents (\$1.40) per square foot per month and shall be payable in advance and is subject to increase as set forth in Section 12.A (“Base Fee”). Permittee shall pay City in annual installments on the Commencement Date and on each anniversary of the Commencement Date (or the first business day thereafter, if the anniversary falls on a weekend or national holiday).

By signing in the spaces provided below, Permittee agrees to terms of the Open Air Dining Encroachment Permit Agreement which consists of the terms above and the Standard Terms and Conditions attached as Exhibit A, including the attachments.

IN WITNESS WHEREOF, CITY and PERMITTEE cause this Agreement to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

ACCEPTED AND AGREED TO:

“Permittee”:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF BEVERLY HILLS,  
a municipal corporation

\_\_\_\_\_  
RODERICK J. WOOD  
City Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT

\_\_\_\_\_  
ANNE BROWNING MCINTOSH  
Interim Director of Community Development

\_\_\_\_\_  
DAVID D. GUSTAVSON  
Director of Public Works and Transportation

EXHIBIT "A"

**ENCROACHMENT PERMIT AGREEMENT  
STANDARD TERMS AND CONDITIONS**

This Agreement (as herein defined) is entered into by and between the CITY OF BEVERLY HILLS, a municipal corporation (hereinafter "City"), and the Permittee, as set forth in Section 1 of the Underlying Agreement, and is made with reference to the following:

RECITALS

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the laws of the State of California and the Beverly Hills Municipal Code.

B. City and Permittee desire to enter into an Agreement for the operation of an open air dining area on the real property located in the City, which is herein described, upon the terms and conditions set forth herein. To the extent such operation encroaches on City sidewalks, it meets all the following criteria:

(1) the encroachment use is consistent with the General Plan;

(2) the encroachment use promotes the harmonious development of the area;

(3) the encroachment use does not adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property;

(4) the encroachment use does not create any significant traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards;

(5) the encroachment use does not impede the safe and orderly flow of pedestrians along the public right-of-way;

(6) the encroachment use does not adversely impact parking in the vicinity as a result of employee or patron parking demands;

(7) the encroachment use does not create a substantial adverse impact on persons or property;  
and

(8) the encroachment use does not adversely affect the public health, welfare and safety.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

9. GENERAL.

These Standard Terms and Conditions, and its attachments, shall be deemed fully incorporated in the Encroachment Permit Agreement ("Underlying Agreement") to which this Exhibit A is attached, and these Standard Terms and Conditions and the Underlying Agreement shall hereinafter be collectively referred to as the "Agreement." All terms shall, unless expressly provided to the contrary herein, have the same respective meaning as set forth in the Underlying Agreement. The Section numbers of this Exhibit A are a continuation of the Section numbers of the Underlying Agreement.

10. TERM AND PURPOSE OF PERMIT.

In accordance with the provisions of Section 10-3-3503 of the Beverly Hills Municipal Code, City hereby grants to Permittee upon each of the covenants and conditions set forth herein for the period commencing on the Commencement Date set forth in Section 2 and ending five years later on the Termination Date set forth in Section 3 subject to termination as herein set forth in Section 33 of this Agreement, a permit to operate an open air dining area on the Premises during the Approved Hours of Operation, as set forth in Section 5, and as shown on the plans that have been reviewed and approved by the Director of Community Development (the "Director") as of the Commencement Date and as required by Sections 10-3-3503 and 8-3-12 of the Beverly Hills Municipal Code. The Plans for the Premises are attached hereto as Attachment 1 (hereafter, the "Plans") and are incorporated herein by reference. The Plans may only be amended with the prior, written approval of the Director or his designee.

11. PREMISES AND USE.

The Premises covered by this Agreement shall be only such as are described in Section 4 of this Agreement and shown on the Plans. Permittee shall not use the Premises or any equipment, furniture or fixtures except as set forth in this Agreement and in the Plans. The only products Permittee may dispense on the Premises are food and beverage products.

Permittee shall be allowed to operate its business on the Premises only during the Approved Hours of Operation, unless prior written approval has been secured from City to do otherwise. These hours may be further restricted by other City approvals or City laws, ordinances, rules or regulations.

At all times Permittee operates its business on the Premises, Permittee shall maintain tables and chairs on the Premises in substantially the same number and configuration as shown on the Plans. Permittee shall make no changes to the configuration or layout of the Premises without the prior written approval of the Director. At no time shall Permittee operate the Premises without tables and chairs.

At all times the use of the Premises shall allow for an Unobstructed Pedestrian Path as set forth in Section 6 and as shown on the Plans. Such Unobstructed Pedestrian Path must be entirely clear of all obstacles, including parking meters, light standards, utility poles, newspaper stands, tree wells, driveway approaches and curb ramps for physically challenged pedestrians.

City may determine that Permittee's use of the Premises necessitates the provision of additional parking pursuant to Sections 10-3-2730 entitled "Parking Requirements" and 10-3-3510 entitled "Parking requirements for open air dining" of the Beverly Hills Municipal Code. City may waive its rights to require Permittee to provide such parking, in whole or in part, for all or part of the term of this Agreement. City reserves the right to revoke such a waiver at any time during the remainder of the term of this Agreement.

12. PERMIT FEE.

A. Base Fees

Base Fees set forth in Section 8 of the Underlying Agreement shall be paid to the City of Beverly Hills as set forth in this Agreement. Base Fees shall be increased annually by an amount equal to the annual increase in the Consumer Price Index for all Urban Consumers for the Los Angeles-Riverside-Orange County Areas (the "CPI"), including all items as published by the U.S. Bureau of Labor Statistics as of March 1 of each year. For the purposes of this article, the CPI change will be measured from January 1<sup>st</sup> to January 1<sup>st</sup>, and the maximum increase in any year shall be capped at three percent (3%). Base Fees shall be made payable to the order of the "City of Beverly Hills" and be delivered to the Director of Finance Administration, 455 North Rexford Drive, Second Floor, Beverly Hills, California 90210.

B. Additional Fees

Permittee shall pay as additional fees, all taxes and assessments of any nature whatsoever levied upon the Premises, insurance premiums for all insurance required under this Agreement, and all fees and expenses relating to the use of the Premises according to the Plans, including, but not limited to, the costs of preparing the Plans, costs of provision of utilities and permit fees.

13. EQUIPMENT.

Permittee shall, at its sole cost and expense, furnish a semi-permanent Barrier in conformance with Section 7 of this Agreement and the Plans around the Premises in such a manner to ensure that use of the Premises will take place inside the Barrier and will not cause a safety hazard or nuisance to pedestrians. The Barrier is shown on the Plans attached hereto as Attachment 1.

All equipment, furnishings and fixtures and the cost of their installation shall be provided at the sole expense of Permittee. All such equipment, furnishings and fixtures shall be installed and used as shown on the Plans and shall be used on the Premises. Equipment, furnishings and fixtures that are not installed or used in such a manner as to become permanently affixed to or a part of the Premises shall be deemed to be Permittee's personal property and shall be removed by Permittee at its sole expense at the termination of this Agreement. Equipment, furnishings or fixtures shall not be installed in such a manner as to become permanently affixed to or a part of the Premises without the prior written consent of City and, if so installed, shall either become the property of City or, at City's option, shall be removed by Permittee at its sole expense at the termination of the Agreement. City may require, as a condition of consent for permanent affixing, that Permittee execute a recordable covenant running with the land, in a form approved by the City Attorney, surrendering possession of the encroachment structure, and releasing City from all claims in the event City determines to widen or improve the street, alley, parkway, or other public place where the encroaching structure is situated. City may also impose such other conditions as deemed necessary to protect City, persons, property, or the public health, welfare, and safety.

14. UTILITIES.

Permittee shall pay all charges for fuel, gas, water, electricity, telephone services, and any other utilities necessary to carry on the operations of Permittee. Permittee shall not run electricity to the open air dining area unless it has first received a permit from City's Building and Safety Department and shall not operate heaters except as shown on the Plans and as approved by City's Building and Safety Department and Fire Department.

15. FOODS AND BEVERAGES.

All foods and beverages sold or kept for sale by Permittee shall conform to all applicable federal, State, County and City laws, ordinances, rules and regulations in all respects.

No adulterated, misbranded, or impure food, beverage, or merchandise shall be sold or kept for sale by Permittee, and all food, beverage and merchandise shall be stored and handled with due regard for sanitation. Permittee shall not sell or give away any commodity which, in the opinion of City, will cause undue litter on or around the Premises. The sale of alcoholic beverages is allowed only if in compliance with all applicable federal, State, County and City laws, ordinances, rules and regulations.

16. MAINTENANCE.

Permittee at its own expense shall keep the Premises in a clean and sanitary condition and upon expiration of this Agreement, or upon earlier termination of this Agreement, shall return the Premises to City in as good a condition as they now are. During the term of this Agreement, Permittee shall steam clean the Premises and the public sidewalk adjacent to the Premises to the edge of the curb on a weekly basis. If Permittee does not keep the Premises clean, and fails to correct any unclean or unsanitary condition within 48

hours after being notified in writing to do so by City, City may enter the Premises and remedy the condition, or conditions, and charge the cost to Permittee.

17. GARBAGE AND RUBBISH.

No boxes, barrels, supplies or rubbish in any form shall be kept, piled or stored in the Premises or surrounding areas unless approved in advance by City. Permittee shall provide standard garbage receptacles, shall place therein all garbage and refuse, and shall arrange with the Sanitation Division of the Department of Public Works of City or other licensed refuse hauler for collection from an approved location at Permittee's expense.

18. ALTERATIONS AND REPAIRS.

Permittee accepts the Premises in the condition they now are, and City shall not be required to make any alterations, improvements or repairs therein or thereon. Permittee hereby waives any and all rights it may have to any expressed or implied warranties concerning the condition of Premises. Permittee shall not make any changes to or remove any portion of the Premises without first securing the prior consent of City in writing. All such approved changes or removals shall be at the sole expense of Permittee.

19. SIGNS AND ADVERTISEMENTS.

Except as provided by the Plans, no signs or advertising matter of any kind shall be permitted unless and until approved in writing by City. Notwithstanding the foregoing, Permittee is encouraged to install Holiday Decorations in appropriate areas within Permittee's business establishment in accordance with *Business Owner's Guide to Installing Holiday Decorations* or other rules as the City may establish from time to time.

20. CONDUCT.

Permittee shall at all times conduct and operate its business in a quiet and orderly manner to the satisfaction of City so that same shall not become or constitute a nuisance either public or private.

21. EMPLOYEES AND MECHANICS' LIEN.

Permittee shall keep said Premises and every estate, right, title and interest therein, or in or to any part thereof, at all times during the term of this Agreement, free and clear of any mechanics' liens and other liens, including, but not limited to, liens for labor, services, supplies, equipment, or material. Permittee will at all times fully pay and discharge and wholly protect, defend, indemnify and hold harmless City with respect to such liens, and any claims, assertions or filing thereof.

22. INGRESS AND EGRESS.

City reserves the right to enter upon the Premises covered by this Agreement at any and all times during the term of this Agreement, including the right to require Permittee to remove its Barrier and equipment as described in this Agreement.

23. TAXES.

Permittee shall exonerate, indemnify and hold harmless City from and against, shall defend City from and against, and shall assume full responsibility for, payment of all wages or salaries and all federal, State, County and City taxes or contributions imposed or required under the Unemployment Insurance, Social Security, Income Tax laws, Worker's Compensation laws, or other laws with respect to Permittee's employees engaged in the performance of Permittee's obligations and operations hereunder.

This Agreement may create a possessory interest in public property which is subject to taxation. In the event such interest is created, Permittee shall pay any and all taxes levied on such interest.

Permittee shall pay any and all taxes upon personal property and improvements belonging to said Permittee and upon its possessory interests, if any, and Permittee shall pay all sales and other taxes levied against the operation of said business.

24. INSURANCE.

Permittee shall procure and maintain at Permittee's own cost and expense for the duration of this Agreement, the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the condition of the Premises or the possession, occupancy, operation and use of the Premises by Permittee, Permittee's agents, representatives, employees, or subcontractors.

A. Extent of Coverage.

Permittee shall procure limits of insurance coverage in the following minimum amounts:

1. Comprehensive General Liability: Two Million Dollars (\$2,000,000), combined single limit per occurrence for bodily injury and property damage. Such comprehensive liability policy shall expressly include coverage for fire-legal liability.

2. Worker's Compensation and Employer's Liability: Worker's Compensation limits as required by the Labor Code of the State of California and Employer's Liability limits of One Million Dollars, (\$1,000,000) per accident.

3. Builder's Risk or Tenant Improvements Insurance: At City's discretion, either (1) a tenant improvements or betterments insurance or (2) an "all risks" builder's risk insurance. Such insurance shall apply to improvements in place and all material and equipment at the job site furnished under contract. Such insurance shall cover all risks, including but not limited to vandalism and malicious mischief, and shall further cover any damages arising as a result of construction of any improvements, changes or alterations to the Premises, including but not limited to, hook-ups to utilities or upgrading of any utilities; but excluding contractors', subcontractors' and construction managers' tools and equipment and property owned by contractors' or subcontractors' employees, with limits in accordance with project value.

4. Personal Property Insurance: Property insurance shall be provided for all Permittee's contents, inventory, equipment, and for any improvements or betterments made by Permittee to the Premises. Permittee shall obtain and keep in force during the term of this Agreement a policy or policies of insurance covering loss or damage to such equipment, improvements or betterments located in, on, or upon the Premises, in the amount of at least one hundred percent (100%) of the full replacement value thereof, as the same may exist from time to time, against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, flood, and special extended perils. City shall bear no responsibility for any loss, damage or destruction of Permittee's equipment, improvements or betterments, even if Permittee fails to procure and maintain the personal property insurance required hereunder.

B. Duration of Coverage. Permittee shall procure and maintain the insurance coverage described in subsections A(1), (2) and (4) of this Section prior to commencing occupancy of the Premises and for the entire term of such occupancy. Permittee shall procure and maintain the insurance coverage described in subsection A(3) of this Section 24, prior to commencing any construction or demolition on the Premises and until completion and acceptance of such work.

C. Deductibles and Self-Insured Retention. Such insurance policies shall have no deductibles or self-insured retentions unless approved in advance by City in writing. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retention as respects City, its officials, and employees;

or Permittee shall procure a bond guaranteeing payment of losses, related investigation, claims administration and defense expenses.

D. Other Insurance Provisions.

1. General Liability:

(i) City, members of its City Council, boards and commissions, officers, agents and employees are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Permittee; products and completed operations of Permittee; premises owned, leased or used by Permittee, or arising from or in any manner connected to Permittee's business, activities, operations, services or work conducted in or about the Premises. The coverage shall contain no special limitations on the scope of protection afforded to City, members of City Council, boards and commissions, officers, agents, and employees.

(ii) Permittee's insurance coverage shall be primary insurance as respects City, members of its City Council, boards and commissions, officers, agents, and employees. Any insurance or self-insurance maintained by City, its officials, and employees shall be in excess of Permittee's insurance and shall not contribute to it.

(iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, members of its City Council, boards and commissions, officers, agents, and employees.

(iv) Coverage shall state that Permittee's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Worker's Compensation, Employer's Liability and Property Coverages: The insurer shall agree to waive all rights of subrogation against City, members of its City Council, boards and commissions, officers, agents, and employees for losses arising from the condition, occupancy, possession of the Premises or any activities or operations of Permittee herein.

3. All Coverages.

(i) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to City as set forth in Section 34 of this Agreement.

(ii) If Permittee, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. City, at its sole option, may obtain (but has no obligation to do so) such insurance in Permittee's name or as agent of Permittee and shall be compensated by Permittee for the costs of the insurance premiums or may deduct such costs from the security deposit required hereunder. Permittee shall pay City interest on paid insurance premiums at the maximum rate permitted by law computed from the day written notice is received that the premiums have been paid.

E. Acceptability of Insurance. All insurance policies are to be placed with insurers holding a "General Policy Holders' Rating" of B+VII or better as set forth in the most current issue of "Best's Insurance Guide" and shall be authorized to do business in California.

F. Verification of Coverage. Prior to exercising any right granted under this Agreement, Permittee shall furnish City with a certificate or certificates of insurance verifying all insurance coverage required by this Section 24. Said certificates shall be signed by a person authorized by that insurer to bind

coverage on its behalf. Current copies of said certificates shall be maintain on file with the City Clerk at all times during the term of this Agreement.

G. Increase in Required Insurance Coverages. City may increase the dollar amount of coverage required under any of the policies described above, upon prior written notice to Permittee.

25. COMPLIANCE WITH LAWS AND ORDINANCES.

Permittee shall conduct its business in accordance with all federal, State, County and City laws, ordinances, rules and regulations as may from time to time be applicable to such business, including but not limited to those regulating design and construction of improvements, handicap access, the sale of food, the sale of alcohol, lighting, and the provision of utilities.

26. PERMITS AND LICENSES.

Permittee shall be required to obtain any and all permits and licenses as may from time to time be required in connection with the services to be performed under this Agreement and the operation of an open air dining area for food and beverages.

27. PROHIBITION AGAINST TRANSFER.

Permittee shall not assign, sublease, hypothecate, or transfer this Agreement or any interest therein directly or indirectly by operation of law or otherwise without the prior written consent of City. Any attempt to do so without said consent shall be null and void, and no assignee, sublessee, hypothecatee or transferee shall acquire any right or interest by reason of such attempted assignment, hypothecation or transfer.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Permittee, or of the interest of any general partner or joint venturer or syndicated member or cotenancy, which shall result in changing the control of Permittee, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the Permittee.

28. WAIVERS.

A waiver by City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

29. HOLDOVER.

Any holding over by Permittee after the expiration or any termination of this Agreement or of any extension or renewal thereof shall not constitute a renewal or extension of the term hereof.

30. BOND AND SECURITY INTEREST.

A. Bond. Permittee shall provide a bond insuring Permittee's performance in accordance with the terms of this Agreement, including but not limited to the satisfactory completion of any construction or demolition and the maintenance of the Premises. The bond shall be in a form satisfactory to the City Attorney and City Engineer, in an amount determined by the City Engineer to be sufficient, and as required by Sections 8-3-03 and 8-3-09 of the Beverly Hills Municipal Code. City shall conduct a periodic review no less often than annually of Permittee's compliance with the terms of this Agreement and the bond and insurance requirements hereunder.

B. Security Interest . City shall have a security interest upon and against all personal property belonging to Permittee and used in connection with said Premises to secure the payment of any and all sums due to City pursuant to the terms of this Agreement.

31. HOLD HARMLESS.

Permittee agrees to defend, indemnify and hold harmless City and members of its City Council, boards and commissions, officers, agents, and employees (hereinafter, collectively "City parties") from and against all loss, damage, cost, expense, liability, claims, demands, suits, attorneys' fees and judgments arising from or in any manner connected to Permittee's possession, occupancy, use, construction or demolition of the Premises or arising from or in any manner connected to the condition of the Premises and Permittee's business, activities, operations, services or work conducted in, on or about the Premises.

Permittee further agrees to indemnify, defend and hold harmless all City parties, from and against all loss, damage, costs, expense, liability, claims, demands, suits, attorneys' fees and judgments arising from or in any manner connected to the furnishing or supplying of any work, services, materials, equipment or supplies by any persons, firms, corporations or other entities in connection with this Agreement or Permittee's operations.

Without limiting the generality of the foregoing, Permittee agrees that no City party shall be liable for any injury to Permittee's business or any loss of income therefrom, or for damage to the goods, wares, merchandise, improvements or other property of Permittee, Permittee's officers, agents, employees, contractors, invitees, or customers, or any other person in, on or about the Premises, or personal injury or death of Permittee, its officers, agents, employees, contractors, invitees, and customers.

Permittee shall further indemnify and hold harmless City from and against any and all claims arising (i) from any breach or default in the performance of any obligations on the part of Permittee to be performed under the terms of this Agreement and the encroachment permit issued pursuant hereto, (ii) from any negligence or other wrongful conduct of Permittee, or (iii) from the issuance of the encroachment permit. In the event any action or proceeding is brought against City by reason of such claim, Permittee, upon notice from City, shall defend such action or proceeding at Permittee's expense, by legal counsel satisfactory to City.

32. INDEPENDENT CONTRACTOR.

It is understood and agreed that Permittee, in the performance of this Agreement, will be acting in a wholly independent capacity and not as the agent, employee, partner, or joint venturer of City. This Agreement does not create a tenancy of any nature whatsoever between City and Permittee.

33. TERMINATION.

In the event Permittee fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Permittee shall be deemed in default in the performance of its obligations under this Agreement. If such default is a monetary default which is not cured within a period of three (3) days after receipt of written notice of default from City to Permittee, specifying the nature of such default and the steps necessary to cure such default, City may terminate this Agreement forthwith by giving written notice thereof to Permittee. If such default is a non-monetary default which is not cured within ten (10) days after written notice of default from City to Permittee, specifying the nature of such default and the steps necessary to cure such default, City may terminate this Agreement forthwith by giving written notice thereof to Permittee.

City shall have the option at any time, without cause, of terminating this Agreement on thirty (30) days written notice. Permittee shall have the option of terminating this Agreement on thirty (30) days written notice. Upon any termination, Permittee shall pay to City that portion of the compensation specified in Section 12 of this Agreement unpaid by Permittee prior to the effective date of termination.

Termination of this Agreement shall mean that Permittee's encroachment permit is revoked. Permittee may appeal any termination to the Beverly Hills City Council pursuant to Sections 1-4-01 et seq. and 8-3-13 of the Beverly Hills Municipal Code. However, during the pendency of the appeal, Permittee shall cease to use the Premises for open air dining purposes.

34. NOTICES.

All notices, demands, requests and approvals to be given under this Agreement shall be given in writing and shall be deemed served when delivered personally, or seventy-two (72) hours after the deposit thereof in the United States mail, postage prepaid and addressed as hereinafter provided. All notices, requests and approvals from Permittee to City shall be addressed to: Office of the City Manager, 455 North Rexford Drive, Third Floor, Beverly Hills, California 90210. All notices, demands, requests and approvals from City to Permittee shall be addressed to the Permittee at the address set forth in Section 1 of this Agreement. Either party hereto may, from time to time by notice in writing served upon the other party as aforesaid, designate a different mailing address or a different person to whom all such notices or demands are thereafter to be addressed.

35. COSTS OF LITIGATION.

If either party hereto institutes any action or proceeding in court to enforce any provision hereof or for damages by reason of an alleged breach of any provisions of this Agreement, the prevailing party shall be entitled to receive from the losing party all costs and expenses and such amount as the court may adjudge to be reasonable attorneys' fees for the costs incurred by the prevailing party in such action or proceeding.

36. CAPTIONS FOR CONVENIENCE.

The captions herein are for convenience only, are not a part of this Agreement and do not in any way limit, define or amplify the terms and provisions hereof.

37. COUNTERPARTS.

This Agreement may be executed in several counterparts, each of which is an original, and all of which together constitute but one and the same document.

38. MERGER OF NEGOTIATIONS.

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any amendment to this Agreement shall only be valid if in writing and signed by both parties.

39. GOVERNING LAW.

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties, shall be interpreted and construed pursuant to the law of the State of California.

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///  
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**ATTACHMENT 1**  
**PLANS**  
**[to be inserted by staff]**